

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Dominic Marrocco,

Plaintiff

v.

David Johnston,

Defendant

Case No.: 2:18-cv-02441-JAD-EJY

**Order Granting Motions in Limine  
and to Strike**

[ECF Nos. 186, 199]

Dominic Marrocco sues David Johnston for slander and intentional infliction of emotional distress, alleging that Johnston published on social media false claims that Marrocco committed crimes.<sup>1</sup> Trial is set to begin next month.<sup>2</sup> Though the parties have stipulated to several pre-trial evidentiary issues,<sup>3</sup> Marrocco moves in limine to preclude three categories of evidence, to which pro se defendant Johnston neither stipulates nor filed an opposition.<sup>4</sup> Local Rule 7-2(d) provides that “[t]he failure of an opposing party to file points and authorities in response to any motion[,]” with two limited exceptions that do not apply here, “constitutes a consent to the granting of the motion.”<sup>5</sup> Because Johnston failed to oppose the motion and the deadline to do so has passed, and because Marrocco has established that the categories of evidence are irrelevant or substantially more prejudicial than probative under Federal Rules of Evidence 401 and 403,<sup>6</sup> Marrocco’s motion is granted as follows:

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<sup>1</sup> ECF No. 1.

<sup>2</sup> ECF No. 183.

<sup>3</sup> ECF No. 185.

<sup>4</sup> ECF No. 186.

<sup>5</sup> L.R. 7-2(d).

<sup>6</sup> Fed. R. Evid. 401; Fed. R. Evid. 403.


- 1 (i) Johnston may not introduce evidence of, or refer to, other lawsuits,  
 2 proceedings, or claims involving Marrocco or his counsel, including  
 3 eviction proceedings;
- 4 (ii) No party may refer to a party's immigration status; and
- 5 (iii) Johnston may not argue or introduce evidence concerning any purported  
 6 damages he suffered because he has no claims pending in this case.

7 Marrocco also moves to strike Johnston's request that the court take judicial notice of  
 8 several patents.<sup>7</sup> Johnston made that request in connection with a motion for declaratory  
 9 judgment.<sup>8</sup> Because I denied that motion as procedurally improper,<sup>9</sup> Johnston cannot show that  
 10 the patents are relevant at this time, so I grant Marrocco's motion.

### 11 Conclusion

12 IT IS THEREFORE ORDERED that Marrocco's omnibus motion in limine [ECF No.  
 13 186] is **GRANTED**, subject to the court's ability to modify this ruling at trial should the  
 14 proceedings so warrant.

15 IT IS FURTHER ORDERED that Marrocco's motion to strike [ECF No. 199] is  
 16 **GRANTED**.

17   
 18 U.S. District Judge Jennifer A. Dorsey  
 19 February 7, 2023  
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 21

22 <sup>7</sup> ECF No. 199.

23 <sup>8</sup> ECF No. 193.

<sup>9</sup> ECF No. 197.